

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

CARMEN CONTRERAS

§

Plaintiff,

§

vs.

§

WELLS FARGO BANK, N.A.

§

Defendant.

§

Civil Action No. 3:20-cv-237

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Wells Fargo Bank, N.A. (“Wells Fargo” or “Defendant”) hereby gives notice that it is removing this civil action to the United States District Court for the Western District of Texas, El Paso Division. In support of this Notice of Removal, Defendant respectfully shows the Court the following:

I.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. On August 4th 2020, Plaintiff Carmen Contreras (“Plaintiff”) filed Plaintiff’s Original Petition (the “Petition”) in the 205th District Court, El Paso County, Texas, styled *Carmen Contreras v. Wells Fargo Bank N.A.*, 2020-DCV-2490 (the “State Court Action”). Defendant was served with the Petition on August 17, 2020. True and correct copies of all process, pleadings, and orders served on Defendant in the State Court Action and a copy of the state court docket sheet are contained in the Appendix in Support of Defendant’s Notice of Removal (“APP.”), filed concurrently herewith, and incorporated herein by reference for all purposes. See APP. 001-020.

2. Plaintiff's Petition asserts claims for: (a) age discrimination in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* ("ADEA") and Chapter 21 of the Texas Labor Code ("Chapter 21"); (b) disability discrimination in violation of the Americans with Disabilities Act and the Americans with Disabilities Act Amendment Act of 2008, 42 U.S.C. § 12101 *et seq.* ("ADAAA") and Chapter 21; (c) interference with Plaintiff's rights under the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* ("FMLA"); and (d) retaliation in violation of the FMLA. *See APP 004 – 005.*

**II.
REQUIREMENTS FOR REMOVAL**

3. This Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b), because it is being filed within thirty days after service on Defendant of Plaintiff's Petition. *See 28 U.S.C. § 1446(b).*

4. Removal to this federal district and division is proper pursuant to 28 U.S.C. § 124(d)(3) because it embraces El Paso County, Texas, the place in which the State Court Action was pending.

5. Defendant is the only defendant sued and served with Plaintiff's Petition. Therefore, no other consent to remove is required.

6. Defendant will give prompt written notice of the filing of this Notice of Removal to all adverse parties and will file a copy of it with the District Clerk of El Paso County, Texas.

**III.
FEDERAL JURISDICTION**

7. This action arises under three federal statutes, the ADEA, the ADAA, and the FMLA. *See APP. 003.* This Court has subject matter jurisdiction over this action based on the existence of a federal question because Plaintiff seeks to recover damages under the laws of the

United States. 28 U.S.C. § 1331. It plainly appears from the face of Plaintiff's Petition that Plaintiff has asserted violations of ADEA, ADA and FMLA.

**IV.
DIVERSITY**

8. Plaintiff's Petition meets the amount in controversy requirement for diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) of \$75,000. Plaintiff's Petition seeks monetary relief between \$200,000 to \$1,000,000. *See APP. 005.* Because Plaintiff's Petition affirmatively reveals on its face that Plaintiff seeks damages in excess of the minimum jurisdictional amounts of the federal court, this Court has diversity jurisdiction. *See e.g., Bosky v. Kroger Texas LP,* 288 F.3d 208, 210 (5th Cir. 2002).

9. Upon information and belief, Plaintiff is a citizen of the State of Texas. APP. 002

10. Pursuant to 28 U.S.C. § 1348, Defendant, as a national banking association, is a citizen of the state where its main office is "located". Defendant, with its main office located in Sioux Falls, South Dakota, is a citizen of South Dakota. *See e.g., Jenkins v. Am. Sw. Mortgage Corp.,* SA18CA460FBHJB, 2018 WL 6796124, at *1 (W.D. Tex. Nov. 7, 2018), *report and recommendation adopted,* CV SA-18-CA-460-FB, 2019 WL 413566 (W.D. Tex. Jan. 17, 2019) ("Wells Fargo is a citizen of South Dakota with its main officers there."). Accordingly, Defendant is only a citizen of South Dakota and, therefore, complete diversity exists.

**V.
CONCLUSION AND PRAYER FOR RELIEF**

Defendant respectfully requests that this Court assume jurisdiction over this action and proceed with its handling as if it had been filed in the United States District Court for the Western District of Texas, El Paso Division.

Dated this 11th of September, 2020.

Respectfully submitted,

/s/ Sean M. McCrory

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**ATTORNEYS FOR DEFENDANT
WELLS FARGO BANK N.A.**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was served via CM/ECF electronic filing with the U.S. Western District Court of Texas and provided to the following counsel on this 11th day of September, 2020:

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**ATTORNEY FOR PLAINTIFF
CARMEN CONTRERAS**

/s/ Sean M. McCrory

Sean M. McCrory